

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 492**

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**Introduced by Senator Hernandez**

February 21, 2013

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An act to ~~amend Section 3167~~ *repeal and add Sections 3041 and 3041.2* of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Hernandez. ~~Optometric corporations. Optometrist: practice: licensure.~~

*The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law provides that the State Board of Optometry is required, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice. Any violation of the act is a crime.*

*This bill would delete the definition of the practice of optometry and would instead provide that a licensed optometrist would be authorized to perform certain health-related services, including, but not limited to, examining, preventing, diagnosing, and treating any disease, condition, or disorder of the visual system, the human eye, and adjacent and related structures, prescribing appropriate drugs, including*

*narcotics, and administering immunizations. The bill would require the board to require applicants for licensure to successfully complete specified examinations, and would authorize the board to require the passage of additional examinations with regard to competency to utilize diagnostic and therapeutic pharmaceutical agents, if not covered by the required examinations.*

*Because this bill would change the definition of a crime, it would create a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. The act requires an optometric corporation, as defined, in conducting its practice, to observe and be bound by statutes, rules, and regulations to the same extent as a person holding a license to practice optometry. The act authorizes the board to formulate and enforce rules and regulations to carry out the purposes and objectives of the statutes governing optometric corporations, as specified.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 3041 of the Business and Professions
- 2     Code is repealed.
- 3     3041. (a) ~~The practice of optometry includes the prevention~~
- 4     ~~and diagnosis of disorders and dysfunctions of the visual system,~~
- 5     ~~and the treatment and management of certain disorders and~~
- 6     ~~dysfunctions of the visual system, as well as the provision of~~
- 7     ~~rehabilitative optometric services, and is the doing of any or all of~~
- 8     ~~the following:~~
- 9     (1) ~~The examination of the human eye or eyes, or its or their~~
- 10    ~~appendages, and the analysis of the human vision system, either~~
- 11    ~~subjectively or objectively.~~

1 ~~(2) The determination of the powers or range of human vision~~  
2 ~~and the accommodative and refractive states of the human eye or~~  
3 ~~eyes, including the scope of its or their functions and general~~  
4 ~~condition.~~

5 ~~(3) The prescribing or directing the use of, or using, any optical~~  
6 ~~device in connection with ocular exercises, visual training, vision~~  
7 ~~training, or orthoptics.~~

8 ~~(4) The prescribing of contact and spectacle lenses for, or the~~  
9 ~~fitting or adaptation of contact and spectacle lenses to, the human~~  
10 ~~eye, including lenses that may be classified as drugs or devices by~~  
11 ~~any law of the United States or of this state.~~

12 ~~(5) The use of topical pharmaceutical agents for the purpose of~~  
13 ~~the examination of the human eye or eyes for any disease or~~  
14 ~~pathological condition.~~

15 ~~(b) (1) An optometrist who is certified to use therapeutic~~  
16 ~~pharmaceutical agents, pursuant to Section 3041.3, may also~~  
17 ~~diagnose and treat the human eye or eyes, or any of its or their~~  
18 ~~appendages, for all of the following conditions:~~

19 ~~(A) Through medical treatment, infections of the anterior~~  
20 ~~segment and adnexa, excluding the lacrimal gland, the lacrimal~~  
21 ~~drainage system, and the sclera in patients under 12 years of age.~~

22 ~~(B) Ocular allergies of the anterior segment and adnexa.~~

23 ~~(C) Ocular inflammation, nonsurgical in cause except when~~  
24 ~~comanaged with the treating physician and surgeon, limited to~~  
25 ~~inflammation resulting from traumatic iritis, peripheral corneal~~  
26 ~~inflammatory keratitis, episcleritis, and unilateral nonrecurrent~~  
27 ~~nongranulomatous idiopathic iritis in patients over 18 years of age.~~  
28 ~~Unilateral nongranulomatous idiopathic iritis recurring within one~~  
29 ~~year of the initial occurrence shall be referred to an~~  
30 ~~ophthalmologist. An optometrist shall consult with an~~  
31 ~~ophthalmologist or appropriate physician and surgeon if a patient~~  
32 ~~has a recurrent case of episcleritis within one year of the initial~~  
33 ~~occurrence. An optometrist shall consult with an ophthalmologist~~  
34 ~~or appropriate physician and surgeon if a patient has a recurrent~~  
35 ~~case of peripheral corneal inflammatory keratitis within one year~~  
36 ~~of the initial occurrence.~~

37 ~~(D) Traumatic or recurrent conjunctival or corneal abrasions~~  
38 ~~and erosions.~~

39 ~~(E) Corneal surface disease and dry eyes.~~

- 1     ~~(F) Ocular pain, nonsurgical in cause except when comanaged~~  
2     ~~with the treating physician and surgeon, associated with conditions~~  
3     ~~optometrists are authorized to treat.~~
- 4     ~~(G) Pursuant to subdivision (f), glaucoma in patients over 18~~  
5     ~~years of age, as described in subdivision (j).~~
- 6     ~~(2) For purposes of this section, “treat” means the use of~~  
7     ~~therapeutic pharmaceutical agents, as described in subdivision (c);~~  
8     ~~and the procedures described in subdivision (e).~~
- 9     ~~(e) In diagnosing and treating the conditions listed in subdivision~~  
10    ~~(b), an optometrist certified to use therapeutic pharmaceutical~~  
11    ~~agents pursuant to Section 3041.3 may use all of the following~~  
12    ~~therapeutic pharmaceutical agents:~~
- 13    ~~(1) Pharmaceutical agents as described in paragraph (5) of~~  
14    ~~subdivision (a), as well as topical miotics.~~
- 15    ~~(2) Topical lubricants.~~
- 16    ~~(3) Antiallergy agents. In using topical steroid medication for~~  
17    ~~the treatment of ocular allergies, an optometrist shall consult with~~  
18    ~~an ophthalmologist if the patient’s condition worsens 21 days after~~  
19    ~~diagnosis.~~
- 20    ~~(4) Topical and oral anti-inflammatories. In using steroid~~  
21    ~~medication for:~~
- 22    ~~(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis~~  
23    ~~or episcleritis, an optometrist shall consult with an ophthalmologist~~  
24    ~~or appropriate physician and surgeon if the patient’s condition~~  
25    ~~worsens 72 hours after the diagnosis, or if the patient’s condition~~  
26    ~~has not resolved three weeks after diagnosis. If the patient is still~~  
27    ~~receiving medication for these conditions six weeks after diagnosis,~~  
28    ~~the optometrist shall refer the patient to an ophthalmologist or~~  
29    ~~appropriate physician and surgeon.~~
- 30    ~~(B) Peripheral corneal inflammatory keratitis, excluding~~  
31    ~~Moorens and Terriens diseases, an optometrist shall consult with~~  
32    ~~an ophthalmologist or appropriate physician and surgeon if the~~  
33    ~~patient’s condition worsens 72 hours after diagnosis.~~
- 34    ~~(C) Traumatic iritis, an optometrist shall consult with an~~  
35    ~~ophthalmologist or appropriate physician and surgeon if the~~  
36    ~~patient’s condition worsens 72 hours after diagnosis and shall refer~~  
37    ~~the patient to an ophthalmologist or appropriate physician and~~  
38    ~~surgeon if the patient’s condition has not resolved one week after~~  
39    ~~diagnosis.~~
- 40    ~~(5) Topical antibiotic agents.~~

- 1 ~~(6) Topical hyperosmotics.~~
- 2 ~~(7) Topical and oral antiglaucoma agents pursuant to the~~
- 3 ~~certification process defined in subdivision (f).~~
- 4 ~~(A) The optometrist shall refer the patient to an ophthalmologist~~
- 5 ~~if requested by the patient or if angle closure glaucoma develops.~~
- 6 ~~(B) If the glaucoma patient also has diabetes, the optometrist~~
- 7 ~~shall consult with the physician treating the patient's diabetes in~~
- 8 ~~developing the glaucoma treatment plan and shall inform the~~
- 9 ~~physician in writing of any changes in the patient's glaucoma~~
- 10 ~~medication.~~
- 11 ~~(8) Nonprescription medications used for the rational treatment~~
- 12 ~~of an ocular disorder.~~
- 13 ~~(9) Oral antihistamines.~~
- 14 ~~(10) Prescription oral nonsteroidal anti-inflammatory agents.~~
- 15 ~~(11) Oral antibiotics for medical treatment of ocular disease.~~
- 16 ~~(A) If the patient has been diagnosed with a central corneal ulcer~~
- 17 ~~and the central corneal ulcer has not improved 48 hours after~~
- 18 ~~diagnosis, the optometrist shall refer the patient to an~~
- 19 ~~ophthalmologist.~~
- 20 ~~(B) If the patient has been diagnosed with preseptal cellulitis~~
- 21 ~~or dacryocystitis and the condition has not improved 48 hours after~~
- 22 ~~diagnosis, the optometrist shall refer the patient to an~~
- 23 ~~ophthalmologist.~~
- 24 ~~(12) Topical and oral antiviral medication for the medical~~
- 25 ~~treatment of the following: herpes simplex viral keratitis, herpes~~
- 26 ~~simplex viral conjunctivitis, and periocular herpes simplex viral~~
- 27 ~~dermatitis; and varicella zoster viral keratitis, varicella zoster viral~~
- 28 ~~conjunctivitis, and periocular varicella zoster viral dermatitis.~~
- 29 ~~(A) If the patient has been diagnosed with herpes simplex~~
- 30 ~~keratitis or varicella zoster viral keratitis and the patient's condition~~
- 31 ~~has not improved seven days after diagnosis, the optometrist shall~~
- 32 ~~refer the patient to an ophthalmologist. If a patient's condition has~~
- 33 ~~not resolved three weeks after diagnosis, the optometrist shall refer~~
- 34 ~~the patient to an ophthalmologist.~~
- 35 ~~(B) If the patient has been diagnosed with herpes simplex viral~~
- 36 ~~conjunctivitis, herpes simplex viral dermatitis, varicella zoster~~
- 37 ~~viral conjunctivitis, or varicella zoster viral dermatitis, and if the~~
- 38 ~~patient's condition worsens seven days after diagnosis, the~~
- 39 ~~optometrist shall consult with an ophthalmologist. If the patient's~~

1 condition has not resolved three weeks after diagnosis, the  
2 optometrist shall refer the patient to an ophthalmologist.

3 ~~(13) Oral analgesics that are not controlled substances.~~

4 ~~(14) Codeine with compounds and hydrocodone with~~  
5 ~~compounds as listed in the California Uniform Controlled~~  
6 ~~Substances Act (Division 10 (commencing with Section 11000)~~  
7 ~~of the Health and Safety Code) and the United States Uniform~~  
8 ~~Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use~~  
9 ~~of these agents shall be limited to three days, with a referral to an~~  
10 ~~ophthalmologist if the pain persists.~~

11 ~~(d) In any case where this chapter requires that an optometrist~~  
12 ~~consult with an ophthalmologist, the optometrist shall maintain a~~  
13 ~~written record in the patient's file of the information provided to~~  
14 ~~the ophthalmologist, the ophthalmologist's response, and any other~~  
15 ~~relevant information. Upon the consulting ophthalmologist's~~  
16 ~~request and with the patient's consent, the optometrist shall furnish~~  
17 ~~a copy of the record to the ophthalmologist.~~

18 ~~(e) An optometrist who is certified to use therapeutic~~  
19 ~~pharmaceutical agents pursuant to Section 3041.3 may also perform~~  
20 ~~all of the following:~~

21 ~~(1) Corneal scraping with cultures.~~

22 ~~(2) Debridement of corneal epithelia.~~

23 ~~(3) Mechanical epilation.~~

24 ~~(4) Venipuncture for testing patients suspected of having~~  
25 ~~diabetes.~~

26 ~~(5) Suture removal, with prior consultation with the treating~~  
27 ~~physician and surgeon.~~

28 ~~(6) Treatment or removal of sebaceous cysts by expression.~~

29 ~~(7) Administration of oral fluorescein to patients suspected as~~  
30 ~~having diabetic retinopathy.~~

31 ~~(8) Use of an auto-injector to counter anaphylaxis.~~

32 ~~(9) Ordering of smears, cultures, sensitivities, complete blood~~  
33 ~~count, mycobacterial culture, acid fast stain, urinalysis, tear fluid~~  
34 ~~analysis, and X-rays necessary for the diagnosis of conditions or~~  
35 ~~diseases of the eye or adnexa. An optometrist may order other~~  
36 ~~types of images subject to prior consultation with an~~  
37 ~~ophthalmologist or appropriate physician and surgeon.~~

38 ~~(10) A clinical laboratory test or examination classified as~~  
39 ~~waived under CLIA and designated as waived in paragraph (9)~~

1 necessary for the diagnosis of conditions and diseases of the eye  
2 or adnexa, or if otherwise specifically authorized by this chapter.

3 ~~(11) Punctal occlusion by plugs, excluding laser, diathermy,  
4 cryotherapy, or other means constituting surgery as defined in this  
5 chapter.~~

6 ~~(12) The prescription of therapeutic contact lenses, including  
7 lenses or devices that incorporate a medication or therapy the  
8 optometrist is certified to prescribe or provide.~~

9 ~~(13) Removal of foreign bodies from the cornea, eyelid, and  
10 conjunctiva with any appropriate instrument other than a scalpel  
11 or needle. Corneal foreign bodies shall be nonperforating, be no  
12 deeper than the midstroma, and require no surgical repair upon  
13 removal.~~

14 ~~(14) For patients over 12 years of age, lacrimal irrigation and  
15 dilation, excluding probing of the nasal lacrimal tract. The board  
16 shall certify any optometrist who graduated from an accredited  
17 school of optometry before May 1, 2000, to perform this procedure  
18 after submitting proof of satisfactory completion of 10 procedures  
19 under the supervision of an ophthalmologist as confirmed by the  
20 ophthalmologist. Any optometrist who graduated from an  
21 accredited school of optometry on or after May 1, 2000, shall be  
22 exempt from the certification requirement contained in this  
23 paragraph.~~

24 ~~(f) The board shall grant a certificate to an optometrist certified  
25 pursuant to Section 3041.3 for the treatment of glaucoma, as  
26 described in subdivision (j), in patients over 18 years of age after  
27 the optometrist meets the following applicable requirements:~~

28 ~~(1) For licensees who graduated from an accredited school of  
29 optometry on or after May 1, 2008, submission of proof of  
30 graduation from that institution.~~

31 ~~(2) For licensees who were certified to treat glaucoma under  
32 this section prior to January 1, 2009, submission of proof of  
33 completion of that certification program.~~

34 ~~(3) For licensees who have substantially completed the  
35 certification requirements pursuant to this section in effect between  
36 January 1, 2001, and December 31, 2008, submission of proof of  
37 completion of those requirements on or before December 31, 2009.~~

38 ~~“Substantially completed” means both of the following:~~

1 (A) Satisfactory completion of a didactic course of not less than  
2 24 hours in the diagnosis, pharmacological, and other treatment  
3 and management of glaucoma.

4 (B) Treatment of 50 glaucoma patients with a collaborating  
5 ophthalmologist for a period of two years for each patient that will  
6 conclude on or before December 31, 2009.

7 (4) For licensees who completed a didactic course of not less  
8 than 24 hours in the diagnosis, pharmacological, and other  
9 treatment and management of glaucoma, submission of proof of  
10 satisfactory completion of the case management requirements for  
11 certification established by the board pursuant to Section 3041.10.

12 (5) For licensees who graduated from an accredited school of  
13 optometry on or before May 1, 2008, and not described in  
14 paragraph (2), (3), or (4), submission of proof of satisfactory  
15 completion of the requirements for certification established by the  
16 board pursuant to Section 3041.10.

17 (g) Other than for prescription ophthalmic devices described in  
18 subdivision (b) of Section 2541, any dispensing of a therapeutic  
19 pharmaceutical agent by an optometrist shall be without charge.

20 (h) The practice of optometry does not include performing  
21 surgery. "Surgery" means any procedure in which human tissue  
22 is cut, altered, or otherwise infiltrated by mechanical or laser  
23 means. "Surgery" does not include those procedures specified in  
24 subdivision (c). Nothing in this section shall limit an optometrist's  
25 authority to utilize diagnostic laser and ultrasound technology  
26 within his or her scope of practice.

27 (i) An optometrist licensed under this chapter is subject to the  
28 provisions of Section 2290.5 for purposes of practicing telehealth.

29 (j) For purposes of this chapter, "glaucoma" means either of the  
30 following:

31 (1) All primary open-angle glaucoma.

32 (2) Exfoliation and pigmentary glaucoma.

33 (k) For purposes of this chapter, "adnexa" means ocular adnexa.

34 (l) In an emergency, an optometrist shall stabilize, if possible,  
35 and immediately refer any patient who has an acute attack of angle  
36 closure to an ophthalmologist.

37 *SEC. 2. Section 3041 is added to the Business and Professions*  
38 *Code, to read:*

39 *3041. (a) An optometrist license authorizes the holder to do*  
40 *all of the following:*

1 (1) Examine, prevent, diagnose, and treat any disease, condition,  
2 or disorder of the visual system, the human eye, and adjacent and  
3 related structures.

4 (2) The use or prescription of appropriate drugs, including  
5 narcotic substances other than those listed in Schedule 1.

6 (3) The performance of surgical and nonsurgical primary care  
7 procedures requiring no more than topical or local anesthetic, or  
8 both.

9 (4) The use or prescription of visual therapy, ocular exercises  
10 or vision habilitation, and rehabilitation services.

11 (5) The performance or ordering of appropriate laboratory and  
12 diagnostic imaging tests.

13 (b) An optometrist may administer immunizations.

14 (c) In addition to diagnosing and treating conditions of the  
15 visual system pursuant to subdivision (a), an optometrist may  
16 diagnose other conditions that have ocular manifestations, initiate  
17 treatment, and, in consultation with a physician, manage  
18 medications for these conditions.

19 SEC. 3. Section 3041.2 of the Business and Professions Code  
20 is repealed.

21 3041.2. (a) The State Board of Optometry shall by regulation,  
22 establish educational and examination requirements for licensure  
23 to insure the competence of optometrists to practice pursuant to  
24 subdivision (a) of Section 3041. Satisfactory completion of the  
25 educational and examination requirements shall be a condition for  
26 the issuance of an original certificate of registration under this  
27 chapter, on and after January 1, 1980. Only those optometrists who  
28 have successfully completed educational and examination  
29 requirements as determined by the State Board of Optometry shall  
30 be permitted the use of pharmaceutical agents specified by  
31 subdivision (a) of Section 3041.

32 (b) Nothing in this section shall authorize an optometrist issued  
33 an original certificate under this chapter before January 1, 1996,  
34 to use or prescribe therapeutic pharmaceutical agents specified in  
35 subdivision (d) of Section 3041 without otherwise meeting the  
36 requirements of Section 3041.3.

37 SEC. 4. Section 3041.2 is added to the Business and Professions  
38 Code, to read:

1 3041.2. (a) *The State Board of Optometry shall establish, by*  
 2 *regulation, educational and examination requirements for licensure*  
 3 *to ensure the competence of optometrists to practice.*

4 (b) *On and after January 1, 2014, the board shall require each*  
 5 *applicant for licensure to successfully complete the Part I, Part*  
 6 *II, and Part III examinations of the National Board of Examiners*  
 7 *in Optometry.*

8 (c) *On and after January 1, 2014, the board shall require each*  
 9 *applicant for licensure to successfully complete an examination*  
 10 *in California law and ethics developed and administered by the*  
 11 *board.*

12 (d) *On and after January 1, 2014, the board may require*  
 13 *passage of additional examinations to ensure the competency of*  
 14 *licentiates to utilize diagnostic and therapeutic pharmaceutical*  
 15 *agents, if not otherwise covered by the examinations required*  
 16 *pursuant to subdivisions (a) and (b).*

17 SEC. 5. *No reimbursement is required by this act pursuant to*  
 18 *Section 6 of Article XIII B of the California Constitution because*  
 19 *the only costs that may be incurred by a local agency or school*  
 20 *district will be incurred because this act creates a new crime or*  
 21 *infraction, eliminates a crime or infraction, or changes the penalty*  
 22 *for a crime or infraction, within the meaning of Section 17556 of*  
 23 *the Government Code, or changes the definition of a crime within*  
 24 *the meaning of Section 6 of Article XIII B of the California*  
 25 *Constitution.*

26 SECTION 1. ~~Section 3167 of the Business and Professions~~  
 27 ~~Code is amended to read:~~

28 ~~3167. The board may formulate and enforce rules and~~  
 29 ~~regulations to carry out the purposes and objectives of this article,~~  
 30 ~~including rules and regulations requiring both of the following:~~

31 ~~(a) The articles of incorporation or bylaws of an optometric~~  
 32 ~~corporation shall provide for the sale of any capital stock of the~~  
 33 ~~corporation owned by a disqualified person, as defined in the~~  
 34 ~~Mosccone-Knox Professional Corporation Act, or a deceased person~~  
 35 ~~to the corporation or to the remaining shareholders of the~~  
 36 ~~corporation within the time as the rules and regulations may~~  
 37 ~~provide.~~

38 ~~(b) An optometric corporation, as a condition of obtaining a~~  
 39 ~~certificate pursuant to the Mosccone-Knox Professional Corporation~~  
 40 ~~Act and this article, shall provide adequate security by insurance~~

- 1 ~~or otherwise for any claim against it by a patient arising out of the~~
- 2 ~~rendering of professional services.~~

O